

No. 10925

United States
Circuit Court of Appeals
For the Ninth Circuit.

F. C. MOSER,

Appellant,

vs.

NEW YORK LIFE INSURANCE COMPANY,
a Corporation,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Western District of Washington,
Northern Division

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL

CLARENCE J. COLEMAN

415 First National Bank Building
Everett, Washington

and

CLAYTON BOLLINGER

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WRIGHT, INNIS, & SIMON

RAYMOND G. WRIGHT

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ARTHUR E. SIMON

Suite 1020—1411 Fourth Avenue Building
Seattle, Washington

Attorneys for Appellees [*1]

*Page numbering appearing at foot of page of original certified Transcript of Record.

In the Superior Court of the State of Washington
In and for the County of King

No. 351225

F. C. MOSER,

Plaintiff,

vs.

NEW YORK LIFE INSURANCE COMPANY,
a corporation,

Defendant.

PETITION FOR REMOVAL OF ACTION TO
UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WASH-
INGTON, NORTHERN DIVISION

To the Honorable Judge of the Superior Court
of the State of Washington, for King County:

Comes now the defendant, New York Life Insurance Company, a corporation, petitioner herein, and appearing specially for the purpose only of petitioning for the removal of the above entitled action to the District Court of the United States for the Western District of Washington, Northern Division, and for no other purpose, respectfully represents and alleges as follows:

I.

That defendant, New York Life Insurance Company, is now and was at all times herein mentioned and at all times mentioned in the complaint of plaintiff, and at the commencement and insti-

tution of the above entitled suit or action, and at the time of the serving and filing of this petition for removal, a mutual insurance corporation duly organized, existing and doing business under and by virtue of the laws of the State of New York, and at all the times mentioned was and now is a citizen and resident of the State of New York and a non-resident of the State of Washington.

II.

That plaintiff, F. C. Moser, is now and was at all [3] times hereinafter mentioned, and at all times mentioned in his complaint, and at the time of the commencement and institution of the above entitled suit or action, and at the time of serving and filing this petition for removal, a citizen and resident of the State of Washington within the Northern Division of the Western District of Washington.

III.

That the above entitled action has been brought and commenced in this court and is now pending therein; that copies of plaintiff's summons and complaint were served upon defendant in King County, Washington, by service upon the Insurance Commissioner of the State of Washington, on February 14, 1944, and that at the time of the service and filing of this petition for removal the time within which defendant is required by the laws of the State of Washington to answer or plead to said complaint has not expired.

IV.

That the above entitled action is a suit of a civil nature; that the cause of action stated in plaintiff's complaint is for damages in the sum of \$47,804.53 alleged to have been sustained by plaintiff by reason of alleged false and fraudulent representations of defendant in respect of renewal commissions payable to plaintiff on certain policies of life insurance issued upon applications therefor which plaintiff alleges he secured; and that the matter in controversy and the amount involved in said action and the value of the objects sought by plaintiff in said action exceed the sum of \$3,000.00 exclusive of interest and costs.

V.

That at the date of the commencement of the above entitled action and ever since and now said suit and the entire controversy therein was and still is between citizens [4] and residents of different states, namely, between F. C. Moser, a resident and citizen of the State of Washington, as plaintiff, and New York Life Insurance Company, a corporation created and existing under the laws of the State of New York, as defendant, which corporation is a non-resident and is not a citizen of the State of Washington.

VI.

That defendant presents herewith a good and sufficient bond in the penal sum of One Thousand Dollars (\$1,000.00), as provided by law, and conditioned that defendant will enter in the United

States District Court for the Western District of Washington, Northern Division, within thirty days from the filing of this petition, a certified copy of the record in this suit or action, and further conditioned for the payment of all costs that may be awarded by said District Court if the said District Court of the United States shall determine and hold that this suit or action was improperly or wrongfully removed thereto.

Wherefore, petitioner prays that this Honorable Court proceed no further herein except to accept this petition, to accept and approve the said surety and bond presented herewith, to order the removal of the suit or action to the United States District Court for the Western District of Washington, Northern Division, and to direct that a certified copy of the record herein be made by the Clerk of this Court for filing in said District Court, as provided by law.

RAYMOND G. WRIGHT
(CLARENCE R. INNIS
ARTHUR E. SIMON

Attorneys appearing specially
for New York Life Insurance
Company, defendant

Office and Post-Office Address:

1020 - 1411 Fourth Avenue Building,
Seattle, Washington [5]

State of Washington,
County of King—ss.

Clarence R. Innis, being first duly sworn, on oath deposes and says:

That he is one of the attorneys for the petitioner named in the foregoing petition; that he has read the foregoing petition and knows the contents thereof and that each and every matter and thing therein stated is true; that he makes this verification on behalf of said petitioner because said petitioner is a non-resident of the State of Washington and there are no officers of said petitioner therein.

CLARENCE R. INNIS

Subscribed and sworn to before me this 1st day of March, 1944.

(Notary Seal) LURIE DOROTHY

Notary Public in and for the State of Washington,
residing at Seattle

Filed in King County Clerk's Office Mar. 6, 1944.

[Endorsed]: Filed in the United States District Court Apr. 4, 1944. [6]

[Title of Superior Court and Cause.]

NOTICE OF REMOVAL

To: The above named plaintiff, F. C. Moser, and to
J. C. Bolinger and Clarence J. Coleman, his
attorneys:

You, and each of you are hereby notified that New York Life Insurance Company, appearing specially for the purpose of presenting its petition to the above entitled court for the removal of the above entitled cause to the District Court of the United States for the Western District of Washington, Northern Division, will file its petition and bond for such removal in said Superior Court on the 6th day of March, 1944, and at ten o'clock in the forenoon of said day or as soon thereafter as counsel can be heard, will present the same to the Presiding Judge of the said Superior Court at his court room in the City of Seattle, or to such other judge of said court to whom said petition may, by said Presiding Judge, be transferred or assigned, and apply for an order accepting said petition and bond and directing the removal of the above entitled cause to the District Court of the United States for the Western District of Washington, Northern Division.

A copy of said petition and of the said bond are herewith served upon you. [7]

Dated this 1st day of March, 1944.

RAYMOND G. WRIGHT
CLARENCE R. INNIS
ARTHUR E. SIMON

Attorneys for Petitioner, New York Life Insurance Company, appearing specially and only for the purpose of removal.

Receipt of a copy of the foregoing notice and copies of said petition and said bond is hereby acknowledged this day of 1944.

.....
.....

Attorneys for Plaintiff.

Filed in County Clerk's Office Mar. 6, 1944.

[Endorsed]: Filed in the United States District Court Apr. 4, 1944. [8]

[Title of Superior Court and Cause.]

REMOVAL BOND

Know All Men By These Presents:

That we, New York Life Insurance Company, a corporation, as Principal, and the Indemnity Insurance Company of North America, as Surety, are held and firmly bound unto F. C. Moser, plaintiff in the above entitled action, in the penal sum of One Thousand Dollars (\$1000.00), lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves,

our respective successors and assigns, jointly and severally, firmly by these presents.

Upon Condition, Nevertheless, That

Whereas, the said New York Life Insurance Company, a corporation, defendant herein, has petitioned the Superior Court of the State of Washington, in and for King County, for the removal of the above entitled cause therein pending, wherein the said F. C. Moser is the plaintiff and the said New York Life Insurance Company, a corporation, is defendant, to the United States District Court for the Western District of Washington, Northern Division,

Now, if the said New York Life Insurance Company, a corporation, shall enter into the said United States District Court for the Western District of Washington, Northern Division, within thirty (30) days from the date of filing said petition, a certified copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said United States District Court, if said Court shall [9] hold that this suit is wrongfully or improperly removed thereto, then this obligation to be void; otherwise to remain in full force and effect.

Sealed with our seals this 1st day of March,
1944.

NEW YORK LIFE INSUR-
ANCE COMPANY,

a corporation

By RAYMOND G. WRIGHT
CLARENCE R. INNIS
ARTHUR E. SIMON

Its Attorneys

INDEMNITY INSURANCE
COMPANY OF NORTH
AMERICA

[Seal] By T. A. HILL

Its Attorney-in-fact.

Filed in County Clerk's Office Mar. 6, 1944.

[Endorsed]: Filed in the United States District
Court Apr. 4, 1944. [10]

[Title of Superior Court and Cause.]

ORDER ACCEPTING PETITION AND BOND
AND DIRECTING REMOVAL OF CAUSE
TO UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
WASHINGTON, NORTHERN DIVISION

It appearing to the satisfaction of this court that New York Life Insurance Company, a corporation, named as defendant in the above entitled action, has this day filed its petition for removal of this cause to the United States District Court for the Western District of Washington, Northern Division, in ac-

cordance with the statute therefor provided; and that said defendant has also this day filed its bond on removal duly conditioned with good and sufficient surety as provided by law; and it appearing that said petition for removal and said bond were filed before the presentation thereof to this court for acceptance; and it appearing that due and sufficient written notice of said petition and bond was given to plaintiff above named prior to the filing of the same; and it appearing that this is a proper cause for removal to said District Court,

Now, Therefore, it is hereby Ordered, Adjudged and Decreed that the said petition and bond be and the same are hereby accepted, the bond approved, and the above entitled action be and it is hereby ordered removed to the District Court of the United States for the Western District of Washington, Northern Division; that all further proceedings in this court be stayed; and the Clerk of this Court is hereby ordered to prepare and certify a copy of the record [11] in the above entitled action for filing in said District Court, as provided by law.

Done in open court this 6th day of March, 1944.

JAMES B. KINNE

Judge

Presented by

CLARENCE R. INNIS

Of Wright, Innis & Simon

Filed in County Clerk's Office March 6, 1944

[Endorsed]: Filed in the United States District Court April 4, 1944. [12]

Cause No. 351225

State of Washington
County of King—ss.

I, Norman R. Riddell, County Clerk of King County and ex-officio Clerk of the Superior Court of the State of Washington in and for King County, do hereby certify that the foregoing is a full, true and correct transcript of the entire and complete record and files, including full, true and correct copies of journal and minute entries not substantially embodied in said files, in Cause No. 351225, entitled *F. C. Moser, Plaintiff, vs. New York Life Insurance Company, a corporation, defendant*, as the same now appear on file and record in said cause in my office.

In Testimony Whereof I have hereunto set my hand and affixed the seal of the Superior Court this 14 day of March, A. D. 1944.

[Seal] NORMAN R. RIDDELL,
County Clerk

By R. C. PARKHURST,
Deputy Clerk.

[Endorsed]: Filed in the United States District Court Apr. 4 1944. [13]

United States District Court,
Western District of Washington

No. 901

F. C. MOSER,

Plaintiff,

vs.

NEW YORK LIFE INSURANCE COMPANY,
a corporation,

Defendant.

APPEARANCE

To The Clerk Of The Above-Entitled Court:

You will please enter our appearance as attorneys for defendant New York Life Insurance Company, a corporation in the above-entitled cause, and service of all subsequent papers, except writs and process, may be made upon said defendant, by leaving the same with

WRIGHT, INNIS AND SIMON,
RAYMOND G. WRIGHT
CLARENCE R. INNIS
ARTHUR E. SIMON,

Suite 1020 1411 Fourth Avenue Building, Seattle,
Washington.

[Endorsed]: Filed in the United States District Court Apr. 4 1944. [14]

[Title of District Court and Cause.]

BOND OF NON-RESIDENT DEFENDANT
ON REMOVAL

Know All Men By These Presents:

That we, New York Life Insurance Company, a corporation, as Principal, and the Indemnity Insurance Company of North America, as Surety, are held and firmly bound unto the United States of America in the penal sum of Two Hundred Fifty and no/100 Dollars (\$250.00), lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our respective successors and assigns, jointly and severally, firmly by these presents.

Upon Condition, Nevertheless, That

Whereas, the above entitled action has heretofore been removed from the Superior Court of the State of Washington to the above entitled court upon petition of the Said New York Life Insurance Company, a corporation, the defendant therein, and said defendant is about to file the record on removal of said action in the above entitled court;

Now, Therefore, if the said New York Life Insurance Company, a corporation, shall well and truly pay all fees that must by law be paid by said defendant to the Clerk, Marshal, or other officer of the court, and all costs of the action which it may [15] ultimately be required to pay to any other party therein, then this obligation to be void; otherwise to remain in full force and effect.

Sealed with our seals this 4th day of April, 1944.

NEW YORK LIFE INSURANCE COMPANY,

a corporation

By CLARENCE R. INNIS

One of its Attorneys
INDEMNITY INSURANCE
COMPANY OF NORTH
AMERICA

[Seal] By T. A. HILL

Its Attorney-in-Fact.

[Endorsed]: Filed in the United States District Court Apr. 4 1944. [16]

[Title of District Court and Cause.]

NOTICE

To the above named Defendant, and to Raymond G. Wright, Clarence R. Innis, and Arthur E. Simon, its attorneys:

Please Take Notice that the undersigned will bring defendant's motions to dismiss on for hearing before the above entitled Court at the United States Court House, Seattle, Washington, on the 12th day of June, 1944, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

CLARENCE J. COLEMAN
CLAYTON BOLLINGER
Attorneys for Plaintiff

Copy received and service admitted this 7th day of June, 1944.

WRIGHT, INNIS, & SIMON
Attorneys for Defendant

[Endrosed]: Filed June 7, 1944. [17]

[Title of District Court and Cause.]

MOTION TO DISMISS

The defendant moves the court to dismiss plaintiff's action because in the complaint plaintiff fails to state a claim upon which relief can be granted, upon the grounds that (1) plaintiff fails to allege facts sufficient to state such a claim, and (2) it appears affirmatively from the allegations thereof that the action alleged, if any is barred by the statute of limitations of the State of Washington, and by laches on part of plaintiff.

RAYMOND G. WRIGHT

CLARENCE R. INNIS

ARTHUR E. SIMON

Attorneys for Defendant.

WRIGHT, INNIS & SIMON

1411 Fourth Avenue Building
Seattle 1, Washington.

[Endorsed]: Filed April 5, 1944. [18]

[Title of District Court and Cause.]

MOTION FOR MORE DEFINITE STATEMENT OR FOR BILL OF PARTICULARS

Defendant moves the court for an order directing the plaintiff to file and serve a more definite statement, in the particulars hereinafter indicated, of the cause of action alleged in plaintiff's complaint, or, in the alternative, directing plaintiff to file and serve a bill of particulars, with respect to the matters hereinafter set forth, on the ground that the allegations of plaintiff's complaint in respect of each of said particulars are too indefinite and uncertain and that said matters have not been averred in the complaint with sufficient particularity to enable defendant to properly prepare its responsive pleading and to prepare for trial, namely:

1. Requiring plaintiff in respect of the allegations in Paragraphs IV and V to aver whether the contract referred to therein is the written contract identified by plaintiff as Exhibit "B" and annexed to and made a part of the first amended complaint in plaintiff's civil action No. 503 pending in this court against defendant. If such be not the case, that plaintiff be required to aver the particulars in respect of which the said contract referred to in said paragraphs IV and V differs from said Exhibit "B".

2. Requiring plaintiff in respect to the allegations in paragraphs V and VI to aver whether "Nylic" referred to by plaintiff as "a system which embraces two periods, the first period of twenty [19] (20) years designated by the defendant as the

'qualifying Nylie Period', and the lifetime period thereafter designated by the defendant as the 'Senior Nylie Period,' is the "Nylie Contract" referred to by plaintiff in paragraph VI of the first cause of action in plaintiff's first amended complaint in his civil action No. 503 pending in this court against defendant, which is therein identified by plaintiff as Exhibit "F" and made a part of the complaint of plaintiff in said action. If such be not the case, that plaintiff be required to aver the particulars in respect of which the said "Nylie" and the "Dual Agency System" referred to in said paragraphs V and VI differ from the provisions of said Exhibit "F".

3. Requiring plaintiff in respect of the allegations in paragraphs VII and VIII to aver

(a) Whether the contract referred to therein as the "Agency Agreement dated August 17, 1910" is the written agreement referred to by plaintiff in paragraph V of the first cause of action in the first amended complaint in plaintiff's civil action No. 503 pending in this court against defendant which is therein identified by plaintiff as Exhibit "C" and made a part of plaintiff's complaint in said action. If such be not the case, that plaintiff be required to aver the particulars in respect of which the said agency agreement referred to in said paragraphs VII and VIII differs from the said Exhibit "C";

(b) Whether the "Nylie Contract" referred to in said paragraphs VII and VIII is the "Nylie Contract" which is identified by plaintiff as Exhibit

“F” and as such is annexed to and made a part of the first cause of action in the first amended complaint in plaintiff’s civil action No. 503 pending in this court against [20] defendant. If such be not the case, that plaintiff be required to aver the particulars in respect of which the said “Nylic Contract” referred to in paragraphs VII and VIII differs from the said Exhibit “F”.

4. Requiring plaintiff in respect of the allegations of paragraph VI to aver

(a) the name of each representative or agent of defendant who, as alleged by plaintiff, “represented to the plaintiff that the plaintiff’s compensation under said Dual Agency System during plaintiff’s qualifying Nylic period which the parties agreed to be for seventeen (17) years expiring January 1, 1928, would be the equal of the 45 per cent in renewals provided for in the said agreement dated January 1, 1908” and the title or position of each of said representatives with the defendant at the time plaintiff claims any such representation was made;

(b) The date or dates upon which plaintiff claims each of such representations was made;

(c) The place or places where plaintiff claims each of such representations was made.

(d) Whether such representations were oral or in writing;

(e) If any of them were in writing, the date or dates thereof and a description sufficient to identify the writing, together with a copy thereof in the event plaintiff has a copy; and

(f) If oral, the specific promise or representation which plaintiff claims was made.

5. Requiring plaintiff in respect of the allegations in Paragraphs IX and X to aver

(a) Each date during the seventeen year period ending December 31, 1927, upon which plaintiff was paid by defendant renewal commissions which plaintiff alleges were in the aggregate [21] amount of \$52,171.54, and the amount of each payment, indicating each of the policies upon which each payment of said renewal commissions was paid, the name of the policy holder, the number of the policy, the date of issue of each of said policies, and the kind of life insurance provided for in each;

(b) Each date during the seventeen year period ending December 31, 1927, upon which plaintiff was paid by defendant Nylie monthly income payments in addition to said renewal commissions paid to plaintiff, and the amount of each of said monthly Nylie payments received by plaintiff during said period; and

(c) Each date subsequent to December 31, 1927, that plaintiff as a Senior Nylie has received from defendant Nylie monthly income payments and the amount of each of said payments.

RAYMOND G. WRIGHT

CLARENCE R. INNIS

ARTHUR E. SIMON

Attorneys for Defendant.

WRIGHT, INNIS & SIMON

1411 Fourth Avenue Building
Seattle 1, Washington.

[Endorsed]: Filed April 5, 1944. [22]

[Title of District Court and Cause.]

ORDER OF APPEARANCE

Mr. Clerk:

Enter my appearance as attorneys for the plaintiff in the above-entitled case.

Dated at Seattle, Wash. on 7 day of June, 1944.

CLARENCE COLEMAN

Address: Everett, Wash.

[Endorsed]: Filed June 7, 1944. [23]

[Title of District Court and Cause.]

NOTICE OF FILING RECORD OF REMOVAL

To F. C. Moser, Plaintiff, and J. C. Bolinger and
Clarence J. Coleman, his Attorneys:

You, and each of you, are hereby notified that on the 6th day of March, 1944, by order of the Superior Court of the State of Washington for King County, the above entitled cause was duly removed from said court to the District Court of the United States for the Western District of Washington, Northern Division.

You are further notified that on the 4th day of April, 1944, a duly certified copy and transcript of the record of said cause was filed in the said District Court in the office of the Clerk of the Northern Division of said District in Seattle, Washington, and the undersigned entered their appearance as

attorneys for the defendant, New York Life Insurance Company, a corporation.

You are further notified that service of all subsequent papers, except writs and process, may be made upon the undersigned at their address below stated.

Dated this 4th day of April, 1944.

RAYMOND G. WRIGHT

CLARENCE R. INNIS

ARTHUR E. SIMON

Attorneys for Defendant.

[Endorsed]: Filed April 5, 1944. [24]

In the Superior Court of the State of Washington
in and for the County of King

No. 901

F. C. MOSER,

Plaintiff,

vs.

NEW YORK LIFE INSURANCE COMPANY,
a Corporation,

Defendant.

SUMMONS

The State of Washington to New York Life Insurance Company, a Corporation, defendant:

You Are Hereby Summoned to appear within twenty (20) days after the service of this summons upon you if served within the State of Washington,

and within sixty (60) days after the service of this summons upon you if served outside the State of Washington, exclusive of the day of service, and defend the above entitled action in the Superior Court of King County aforesaid; answer the complaint of the plaintiff, and serve a copy of your answer upon the undersigned attorneys for plaintiff at their office hereinbelow stated; and, in case of your failure so to do, judgment will be rendered against you in accordance with the demands of the complaint of plaintiff, which will be filed with the clerk of the above entitled court (a copy of which is herewith served upon you.)

CLARENCE J. COLEMAN
J. C. BOLLINGER
Attorneys for Plaintiff

Endorsed]: Filed June 14, 1944. [25]

[Title of Superior Court and Cause.]

COMPLAINT

Comes now the plaintiff and for his cause of action against the defendant complains and alleges:

I.

That the plaintiff is now and at all times herein mentioned has been a resident of Seattle, King County, Washington.

II.

That the defendant is a foreign corporation and

at all times herein mentioned has been and now is doing business in the State of Washington under and pursuant to the applicable laws of the State of Washington permitting foregoing corporations to do business in this state; that said defendant at all of said times has and does now maintain an office in Seattle, King County, Washington, for the transaction of company business.

III.

That at all times from October 7, 1907, to and including August 22, 1936, the plaintiff was a special agent of the defendant corporation for the purpose of canvassing for applications for life insurance and annuities and performing such other duties as might be required of him by the terms of his contract of employment with the defendant corporation consisting of agency agreements and Nylie. [26]

IV.

That on or about January 1, 1908, plaintiff entered into a contract with the defendant wherein the plaintiff was to employ his full time as a soliciting life insurance agent for the defendant, which agreement provided for compensation to the plaintiff of nine (9) renewals of five (5) per cent each, or a total renewal commission of forty-five (45%) per cent.

V.

That some time in the year 1910 the defendant established for its life insurance soliciting agents a "dual agency system" consisting of "Nylie" and

a single agency agreement; that "Nylie" is a system which embraces two periods, the first period of twenty (20) years designated by the defendant as the "Qualifying Nylie Period" and the lifetime period thereafter designated by the defendant as the "Senior Nylie Period."

VI.

That during the year 1910 while the plaintiff was working for the defendant under said agreement dated January 1, 1908, the defendant in order to have the plaintiff surrender his said agreement dated January 1, 1908 and to permit the defendant to substitute therefor an agreement under the defendant's said Dual Agency System represented to the plaintiff that the plaintiff's compensation under said Dual Agency System during plaintiff's qualifying Nylie period which the parties agreed to be for seventeen (17) years expiring January 1, 1928, would be the equal of the 45% in renewals provided for in the said agreement dated January 1, 1908.

VII.

That plaintiff relying upon said representations [27] entered into a contract with defendant under the said Dual Agency and "Nylie" system and surrendered the contract dated January 1, 1908, and in lieu thereof defendant gave plaintiff an agency agreement dated August 17, 1910 and a "Nylie" contract, both to become simultaneously effective on January 1, 1911.

VIII.

That at all times during said plaintiff's said qualifying "Nylie" period of 17 years between January 1, 1911 and January 1, 1928, the plaintiff performed services under said contract relying upon the said defendant's representations as to the amount of compensation to be paid plaintiff by the defendant thereunder.

IX.

That said representations were false and fraudulent in that the plaintiff actually received during said period from the defendant under said Dual Agency System, \$52,171.45 in renewal commissions and \$56,498.95 in "Nylie" payments, or a total Dual Agency payment of \$108,709.82, whereas during this same period plaintiff would have been entitled to receive the sum of \$156,514.35 in renewal commissions under the single agency agreement dated January 1, 1908, and that by reason of the premises defendant has wrongfully defrauded plaintiff out of the sum of \$47,804.53, which sum is now due and owing.

X.

That the defendant at all times made all the calculations, handled all of the funds and made all the payments on compensation that was due based on its own calculations; that the plaintiff reposed great confidence in the defendant and its methods of business and that a fiduciary relationship existed between the parties and that as a result of plaintiff's trust as to the manner of the operations of the de-

fen- [28] dant plaintiff did not discover that said representations as to the amount of his compensation were falsely and fraudulently made to him and that plaintiff did not discover that such representations were false and fraudulent until within a period of at least a year from the date hereof.

Wherefore plaintiff prays judgment against the defendant in the sum of \$47,804.53, together with interest thereon at the legal rate and for his costs and disbursements herein and for such other and further relief as to the court may seem just.

CLARENCE J. COLEMAN

Attorneys for Plaintiff.

State of Washington
County of Snohomish,—ss.

F. C. Moser, being first duly sworn on oath, deposes and says: That he is the plaintiff in the above entitled action; that he has read the foregoing complaint, know the contents thereof and believes the same to be true.

F. C. MOSER

Subscribed and sworn to before me this 11 day of February, 1944.

CLARENCE J. COLEMAN

Notary Public in and for the State of Washington,
residing at Everett.

[Endorsed]: Filed in the United States District Court, June 14, 1944. [29]

In the District Court of the United States,
for the Western District of Washington
Northern Division

File No. 901
Civil Action

F. C. MOSER,

Plaintiff,

vs.

NEW YORK LIFE INSURANCE COMPANY,
a corporation,

Defendant.

ORDER CONTINUING THE HEARING OF
DEFENDANT'S MOTION TO DISMISS.

Be It Remembered that this matter heretofore on the 14th day of June, 1944, came on duly and regularly for hearing before the Honorable Lloyd L. Black, United States District Judge, one of the judges of the above entitled court, upon defendant's Motion to Dismiss plaintiff's action, and the court having informally conferred with counsel, with the consent of counsel for plaintiff and defendant respectively, it is by the court

Ordered that the hearing of said motion be and the same hereby is continued until two o'clock, Pacific War Time, in the afternoon of August 7, 1944, at which time the same will be heard unless plaintiff has failed to serve and file on or before July 10, 1944, the Bill of Particulars which plaintiff is required to serve and file in accordance with separate order this day entered herein.

Done in open court this 3rd day of July, 1944.

LLOYD L. BLACK

United States District Judge.

Approved:

CLARENCE J. COLEMAN

Attorney for plaintiff

Approved and presented by:

CLARENCE R. INNIS

Attorney for Defendant

[Endorsed]: Filed July 3, 1944. [30]

[Title of District Court and Cause]

ORDER GRANTING DEFENDANT'S MOTION
FOR BILL OF PARTICULARS

Be It Remembered that this matter heretofore on the 14th day of June, 1944, came on duly and regularly for hearing before the Honorable Lloyd L. Black, United States District Judge, one of the judges of the above entitled court, upon defendant's Motion for More Definite Statement or Bill of Particulars, and the court having conferred informally with counsel for the respective parties and having indicated the views of the court in respect of said motion, with the consent of counsel for plaintiff and defendant respectively, it is ordered by the court.

Ordered, Adjudged and Decreed that defendant's said motion be and the same hereby is granted to the extent hereinafter set forth, and that plaintiff be and he hereby is directed to serve and file herein on or before July 10, 1944, a Bill of Particulars

in which plaintiff shall aver as hereinafter set forth, namely:

1. In respect of the allegations of paragraphs IV and VI plaintiff shall aver and set forth in said Bill of Particulars as a part thereof a complete copy of the contract which plaintiff alleges he entered into with defendant on or about January 1, 1908, wherein plaintiff "was to employ his full time as a soliciting agent for the defendant, which agreement provided for compensation to plaintiff of nine (9) renewals of five (5) per cent each, or a total renewal commission of forty-five (45) per cent."

[31]

2. In respect of the allegations in paragraphs V and VI plaintiff shall aver and set forth in said Bill of Particulars as a part thereof complete copies of the specific Nylie and "Single Agency Agreement" referred to in paragraph V and the specific written agreement or agreements which plaintiff entered into with defendant upon the surrender by plaintiff, as alleged, of "his said agreement dated January 1, 1908"; and plaintiff shall aver and set forth in said Bill of Particulars as a part thereof a complete copy of any other written agreement upon which plaintiff is relying as a basis for recovery in this action.

3. In respect of the allegations in paragraphs VII and VIII plaintiff shall aver and set forth in said Bill of Particulars as a part thereof a complete copy of the alleged contract "with defendant under the said dual agency and 'Nylie system'", and a complete copy of the agency agreement dated Au-

gust 17, 1910, and the "Nylie Contract" referred to in said paragraphs VII and VIII; and in addition a complete copy of any other written agreement or contract upon which plaintiff is relying as a basis for recovery in this action.

4. In respect of the allegations in paragraph VI plaintiff shall aver and set forth in said Bill of Particulars

(a) the name of each representative or agent of defendant who, as alleged by plaintiff "represented to the plaintiff that the plaintiff's compensation under said dual agency system during plaintiff's qualifying Nylie period which the parties agreed to be for seventeen (17) years expiring January 1, 1928, would be the equal of the forty-five (45) per cent in renewals provided for in said agreement dated January 1, 1908", and the title or position of each of said representatives with the defendant at the time plaintiff claims such representations were made;

(b) The date or dates upon which plaintiff claims each of such representations was made.

(c) the place or places where each of said representations was made; [32]

(d) whether such representations were oral or in writing; and

(e) if any of said representations were in writing, the date or dates of each and a complete copy of each and if any of said representations relied upon by plaintiff were oral the specific promise or representation which plaintiff claims was made in each *instants*.

5. In respect of the allegations in Paragraphs IX and X plaintiff shall aver and set forth in said Bill of Particulars

(a) the exact aggregate amount of the sums of \$52,171.54 referred to in said paragraphs, which plaintiff received from defendant prior to January 1, 1928, without further itemization, and in respect of the balance of said \$52,171.54 which plaintiff may have received from defendant subsequent to December 31, 1927, plaintiff shall aver and set forth in said Bill of Particulars the amount of each separate payment received by him, indicating in each instance the policy upon which each of such payments of said renewal commissions was paid to plaintiff by defendant subsequent to December 31, 1927, the date of each of said payments, the name of each of the said policy holders and the number of each of the policies on account of which such payments were made, the date of issue of each of such policies, and the kind of life insurance provided for in each application: and

(b) the exact aggregate amount of the sum of \$56,498.95 referred to in said paragraphs as having been paid to plaintiff by defendant "in 'Nylie' payments" which plaintiff received from defendant prior to January 1, 1928, without further itemization, and in respect of the balance of said \$56,498.95 which plaintiff may have received from defendant subsequent to December 31, 1927, as Nylie monthly income payments referred to in said paragraph IX

plaintiff shall aver and set forth in said Bill of Particulars the amount of each of said separate Nylic monthly payments received by plaintiff subsequent to December 31, 1927, and the date upon which each of said payments was received. [33]

Defendant is hereby granted permission to serve and file, on or before August 1, 1944, further motions, if any, which defendant may desire to direct to plaintiff's complaint as supplemented by said Bill of Particulars.

Done in open court this 3rd day of July 1944.

LLOYD L. BLACK

United States District Judge.

Approved:

CLARENCE J. COLEMAN

Attorney for Plaintiff

Presented by:

CLARENCE R. INNIS

Attorney for Defendant

[Endorsed]: Filed Jul 3 1944. [34]

[Title of District Court and Cause.]

BILL OF PARTICULARS

To the above named defendant and to Raymond G. Wright, Clarence R. Innis and Arthur E. Simon, attorneys for Defendant:

Please take notice that the plaintiff, in compliance with your motion for a Bill of Particulars,

hereby furnishes the information requested in the particulars indicated in your said motion, as follows:

I.

That in response to Paragraph I of the motion for a bill of particulars plaintiff attaches hereto Exhibit "A", the same being Exhibit "B" in Cause No. 503 of the records and files of the above entitled court.

II.

That in response to Paragraph II of the motion for a bill of particulars plaintiff attaches hereto Exhibit "B", the same being Exhibit "F" in Cause No. 503 of the records and files of the above entitled court.

III.

That in response to Paragraph III of the motion for a bill of particulars plaintiff attaches hereto Exhibit "C", the same being Exhibit "C" in Cause No. 503 of the records and files of the above entitled court.

IV.

In response to Paragraph IV of the motion for a bill of particulars plaintiff submits the following:

[35]

(a), (b), (c), (d), all were oral. L Seton Lindsay, Agency Director, on several different dates during the year 1910 at Seattle, Washington. Gilbert Smith, Inspector of Agencies, during 1910 at San Francisco and Seattle, exact dates plaintiff cannot recall. Thomas A. Buckner, Vice President in the year 1910 at Home Office, exact date un-

known, at Seattle, Washington, some time during the months of April or May, 1910, and at 1910 Two Hundred Thousand Dollar Club Convention. E. R. Perkins, Vice President, in 1910, at Home Office, exact date unknown. George W. Perkins, in 1910 at New York, exact date unknown, said Perkins being the principal founder of defendant's Nylic System, a former Vice President of defendant and at that time a Member of the Banking Firm of J. Pierpont Morgan, but still very closely identified with defendant.

(f). The specific promise and representations were that if plaintiff would surrender to defendant plaintiff's agency agreement dated January 1, 1908, plaintiff's Exhibit "A" and permit defendant to substitute for same defendant's Dual Agency System comprising an agency agreement, plaintiff's Exhibit "C" and "Nylic", plaintiff's Exhibit "B", that the compensation of plaintiff under said Dual Agency System during the qualifying Nylic period of said Nylic System which it was agreed would be for 17 years from January 1, 1911 to January 1, 1928, would equal or exceed compensation which plaintiff would make during said 17 years under plaintiff's agency agreement, Exhibit "A". Plaintiff's Agency Agreement, exhibit "A" provided for nine renewals of 5% each and one extra fifth year renewal of 5%.

V.

With respect to information ordered by the court to be furnished pursuant to Paragraph V of defendant's motion for bill of particulars the following is submitted:

All of the nylic payments set forth in a sum of \$56,498.95 [36] were received by plaintiff prior to January 1, 1928.

The aggregate amount of the item of \$52,171.54 received by plaintiff prior to January 1, 1928 was \$49,278.66. The difference between said two sums, namely \$2892.88, was received by plaintiff after January 1, 1928 and is hereinbelow set forth in a table giving all of the information thereon that is available to plaintiff.

Name	Policy Number	Plan of Insurance	Amount Paid	Anniversary Date	Date Paid
Wright	7911888	O.L.	\$ 360.19	1/18/27	2/ 4/28
Pease	9732196	O.L.	573.12	1/25/27	2/15/28
Bradner	9744955	O.L.	648.12	1/25/27	2/15/28
Stone	9928801	O.L.	49.71	7/13/27	8/13/28
Diekey	9739002	O.L.	95.59	3/ 1/27	3/30/28
Diekey	9987494	O.L.	95.59	4/ 6/27	4/11/28
Garrett	9870894	O.L.	284.76	5/25/27	5/19/28
Rothweiler	9982662	no exact reed.	12.56	9/12/27	9/ 8/28
Farmer	10020576	O.L.	156.69	10/ 6/27	no exact reed.
Farmer	10020284	O.L.	17.90	10/ 6/27	no exact reed.
Kay	7956386	20 yr. End.	95.18	11/10/27	11/10/28
McQuade	10062748	O.L.	180.09	1/ 4/28	2/15/29
Welsh	10094128	O.L.	89.51	12/28/28	12/29/29
Welsh	10094129	O.L.	156.60	12/28/28	12/29/29
Welsh	10094130	O.L.	76.91	12/28/28	12/29/29
			\$2892.88		

Respectfully Submitted,
 CLARENCE J. COLEMAN
 CLAYTON BOLLINGER
 Attorneys for Plaintiff.

Copy Received this 5 day of July 1944.

WRIGHT, INNIS & SIMON,
Attorney for Defendant.

[Endorsed]: Filed Jul 8, 1944. [37]

EXHIBIT A

This Agreement, made this 1st day of January in the year 1908, by and between the New-York Life Insurance Company, as party of the first part, and Frederick C. Moser of Seattle in the County of King and State of Washington, as party of the second part, Witnesseth,—

That said parties, in consideration of the mutual covenants and agreements herein contained, hereby mutually covenant and agree with each other, as follows, to wit:

That said first party hereby appoints said second party its special Agent for the purpose of canvassing for applications for insurance on the lives of individuals, and of performing such other duties in connection therewith, as the Officers of said first party may in writing expressly require of him, and that this appointment is made upon the following terms, conditions and agreements:

1st. It is agreed that said second party shall have no authority for or on behalf of said first party to accept risks of any kind, to make, modify or discharge contracts, to extend the time for paying any premium, to bind the Company by any statement, promise or representation, to waive forfeitures or any of the Company's rights or customary

requirements, to name any extra premium for extra risks or privileges, to receive any moneys due or to become due to said first party except upon applications obtained by or through him and then only in exchange for the coupon receipt attached to the application corresponding in date and number with the application, or upon policies or renewal receipts signed by the President, a Vice-President, a Secretary, or the Treasurer, sent to him by the first party for collection.

2d. It is agreed that the second party as such agent shall devote his best talents and energies to the business of this appointment, shall promptly deliver to the first party all applications for insurance upon the Annual Dividend Plan taken or obtained by him whether the medical examiner has reported thereon favorably or unfavorably, and shall strictly observe each and all the rules, regulations, and requirements contained in the first party's book of "Instructions to Agents" issued from time to time, and such special instructions as may from time to time be given to him by any officer of the first party.

3d. It is agreed that the second party shall keep regular and accurate accounts of all transactions under this appointment, and, whenever required by the first party or its authorized agent, shall transmit to the first party a report in detail, embracing every item of business done by or through him and a statement of all moneys collected or received by or through him or on account of said first party.

4th. It is agreed that all books of account, documents, vouchers, and other books or papers whatsoever connected with the business of this appointment, shall be the property of the first party, whether paid for by it or not, and at any and all times shall be open to the first party or its representative for the purpose of examination, and shall be turned over to the first party or its representative on its order at the termination of this appointment, provided, however, that no entry contained in any book of account or other document made or kept by said second party shall be binding [38] on the first party, nor shall any such entry be used as evidence in any dispute between said parties unless the same shall have been first duly examined and approved by the authorized representative of the first party.

5th. It is agreed that all moneys received by the second party for or on behalf of the first party, shall be securely held by him as a fiduciary trust and shall not be used by him for any personal or other purpose whatsoever, but shall be by him immediately paid over to the first party; and that if the second party shall withhold any money, policies, or receipts belonging to the first party after the same have been reported or transmitted to said first party, or if he shall withhold any money, policies, or receipts after they shall have been by it demanded from him, such dereliction shall immediately and without further notice work an unconditional forfeiture of all claims and demands whatsoever accrued or to accrue under this or any pre-

vious agreement, but nothing herein contained shall be construed to affect any rights or claims of said first party against said second party.

6th. It is agreed that the district within which said second party shall have permission to operate is such portions of the State of Washington or such other territory as the first party may direct from time to time, and that the second party shall report his business through the first party's Seattle Branch Office.

7th. It is agreed that said second party shall thoroughly and ably canvass said district; that the first party may, at its option, employ other Agents in said district, and that the second party shall have no claim for commissions or other remuneration on the business effected by such other Agent or Agents so employed.

8th. It is agreed that if in any case the first party shall deem it proper, in consequence of misrepresentations claimed to have been made or misunderstandings had at or before the time of the delivery of a policy, to cancel the policy and return the premiums thereon or any part thereof, the second party shall in such case lose all right to commissions thereon, and shall repay to the first party, on demand, the amount of commissions received on account of such policy.

9th. It is agreed that said second party shall collect from time to time and promptly remit to the first party all renewal premiums which the first party may authorize him to collect by delivering to

him for that purpose the Company's official renewal receipt, but not otherwise.

10th. It is agreed that the necessary expenses for medical examinations (except as provided in Section 17th hereof and in the Company's book of "Instructions to Agents"), for expressage on documents and other things sent by the first party to the second party shall be paid by the first party, and that the first party shall furnish to the second party such a supply of blanks and circulars as it shall deem reasonable; but the first party shall be liable to pay no charge other than as herein stated, or as shall hereafter be allowed in writing by the first party.

11th. It is agreed that the first party shall have, and it is hereby given, a lien upon any commissions or claims for commissions under this or any prior agreement as security for the payment of any claims due or to become due to said first party from said second party. [39]

12th. It is agreed that the second party shall not enter the service of, or place any applications for Annual Dividend insurance with, any other life insurance company, without the consent in writing of the first party, so long as he owes any indebtedness to said first party.

13th. It is agreed that the first party's ledger account with said second party shall at all times be competent and conclusive evidence of the state of the account between the parties hereto, and shall constitute a mutual estoppel as between them. In consideration of the last above agreement in this

paragraph contained, the first party agrees to furnish to the second party a copy of his said ledger account, not oftener, however, than once a month, upon receipt of written request therefor, due allowance to be made, however, for clerical delays in furnishing the same, and if one copy of his ledger account has been furnished him, any subsequent copy may consist only of the additional ledger entries made since the date of such copy, or may consist only of the additional ledger entries made since the date of the last copy of additional ledger entries furnished him.

14th. It is agreed that said second party shall keep deposited with the first party a bond for a satisfactory amount, with satisfactory sureties, conditioned for the faithful performance of his duties as such agent.

15th. It is agreed that in case any other special agent or person acting for the first party shall obtain any business jointly with him, the commission hereinafter provided shall be divided equally between the parties hereto, unless otherwise expressly agreed in writing; that when policies are returned for change and an allowance made on the old policy which is applied to the payment of the premium on the new, no commission shall be allowed on the amount thus transferred from the old to the new policy, and that the commission provided in Section 20 shall not apply when the insured is over sixty years of age.

16th. It is agreed that if the second party shall sell or offer to sell, directly or indirectly, to any

person or persons, policies for insurance to be issued by said first party, at any reduction from the regular Table rates as furnished to said second party by the first party, said sale or offer of sale shall work an immediate termination of this agreement and a forfeiture of all rights and claims arising on account of it without altering or impairing any rights or claims of said first party against said second party.

17th. It is agreed that, in case a policy issued as applied for shall be subsequently returned as "not taken," the second party shall pay to the first party such sum of money as shall cover all fees and expenses connected with issuing such policy.

18th. It is agreed that either party hereto may without cause terminate this agreement upon thirty days' written notice, but when so terminated the commissions on business procured under it by the second party prior to such termination shall thereafter accrue and be paid to him according to the terms of this contract the same as if it had not been terminated, less any indebtedness to the Company; that if, however, said first party shall terminate this agreement within two years from the date of its taking effect for any violation thereof or misconduct by the second party, no commissions or other compensation shall thereafter accrue or be payable under it or otherwise. [40]

19th. It is expressly understood and agreed that this agreement shall be considered strictly confidential, and that under no circumstances shall said

second party mention or exhibit the terms thereof to any person or persons.

20th. It is agreed that the second party shall be allowed under this agreement, and that the first party shall pay him, the following compensation only, unless otherwise expressly agreed in writing, to wit:

A commission on the original cash premium for the first year of insurance, and upon renewal premiums for the years of insurance stated below which shall, during his continuance as said Agent and only in such event, except as otherwise expressly provided herein, be obtained, collected, paid to and received by the first party on participating policies of insurance effected with said first party upon the lives of individuals whose written applications therefor were obtained by or through the second party, issued at ages sixty and under, which commissions shall be at and after the following rates,—

	On Premiums for First Year	On Premiums for 2nd to 6th Years, Includ.
A.		
A. Ordinary Life, Endowments paid by 40 annual premiums and Ten-Year Renewable Term policies.....	55%	5%
B. Limited-payment Life Policies paid by 20 or more annual premiums and Endowments paid by 35 annual premiums	50%	5%
C. Fifteen-payment Life and Endowments paid by 30 annual premiums	45%	5%
D. Ten-payment Life and Endowments paid by 25 annual premiums.....	40%	5%
E. Endowments paid by 20 annual premiums	35%	5%
F. Endowments paid by 15 annual premiums	30%	3%

	On Premiums for First Year	On Premiums for 2nd to 6th Years, Includ.
A.		
G. Endowments paid by 10 annual premiums	20%	3%
H. Child's Pure Endowments, payable at age 25 or under, and Ten-, Fifteen and Twenty-Year Child's Endowments, exchangeable at age 15....	15%	3%

B. On Five-Year Renewable Term policies a commission at the rate of 50% on the premiums for the first year of insurance and a commission on the renewal premiums for the second to the fifth years of insurance, both inclusive, at the rate of 5%.

C. On all Term Insurance other than that specified in subdivisions "A" and "B" hereof, the compensation shall be a single and only brokerage commission of 30% of the original first years', or parts thereof, premiums.

D. On all forms of insurance (except Annuities) and for all ages not included in subdivisions "A", "B" and "C" hereof, the commission for the first year shall be such per centum of the premium as will yield in amount a sum equal to 50% of the premium for an Ordinary Life Policy of the same amount and at the same age, but no commission on the renewal premiums shall be allowed.

E. On all Annuities the compensation shall be such as the Company shall allow in writing in each specific case.

21st. It is agreed that if this agreement shall continue in full force and effect for a period of two years from the date of its taking effect, the renewal commissions specified in subdivision "A" of Section 20th shall, as additional compensation, be extended to cover the 7th, 8th, 9th and 10th years of insurance, and all renewal commissions provided for in this contract shall, as they accrue after said two years, be credited to the account of the second party with the first party, and be payable to him, his executors, administrators or assigns, less any in-

debtedness to the Company, anything in this agreement to the contrary notwithstanding.

22d. It is agreed that this agreement shall take effect on the 1st day of January, 1908, if duly signed by the second party, and countersigned on behalf of the first party by its Contract Registrar at its Home Office, and by one of its Agency Directors, Supervisors or Inspectors of Agencies. 23rd—It is agreed that in consideration of this agreement all existing agreements between the parties hereto are hereby terminated.

In Witness Whereof, the parties to this agreement have subscribed their names to duplicate copies hereof the day and year first above written.

Sec. 23rd inserted before signing. EAL

NEW-YORK LIFE INSUR-
ANCE COMPANY

By THOS. A. BUCKNER

Vice-President.

FRED C. MOSER

Countersigned by

E. A. LEWIS

Contract Registrar.

S. SETON LINDSAY

A. D. [42]

EXHIBIT B

(page 3)

“NYLIC”

No. 2

A System of Benefits for Persistent and Successful Agents

Devised and Practiced by the New York Life Insurance Company

Thomas A. Buckner President

Edition of July, 1910

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(page 6)

This book described Nylic No. 2 as far as Nylic and its benefits apply to agents in the United States and Canada entering Nylic or qualifying under the terms and conditions of Nylic on and after July 1, 1910. It applies to all agents in the United States and Canada who did not qualify in Nylic and retain membership under rules, prior to July 1, 1910, holding written contracts of employment with the Company dated subsequent to August 1, 1910.

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NYLIC

No. 2

The name is derived from combining the initials of the several words which make up our corporate name,—New York Life Insurance Co.

Nylic is a body of persistent and successful men within the ranks of those who create the business of the New York Life Insurance Company.

It has been established in order to give permanency and character to the work of the soliciting agent. Its effect will be primarily to benefit the agent himself, but the ultimate benefits will inure to the policy-holder of the Company.

How It Will Benefit the Policy-Holders

Nylic will benefit the policy-holders of the New York Life Insurance Company because it will directly, and we believe effectually, stop what may be called "waste" in the creation of our business. How to avoid waste is one of the greatest social and economic questions of the hour. It is scarcely an exaggeration to say that, if the waste in any given line of human enterprise could be entirely eliminated, the profits of that enterprise would be doubled, or, to put it the other way, the cost of production [44] would be very largely reduced. We call it "waste" because there seems to be no better term to apply to it. The use of the word does not imply that earnest and intelligent efforts have not been made by all efficient life insurance companies to improve methods of getting business, but rather that, while efforts have been made, no very effective remedy has heretofore been discovered.

The first problem that faces the management of the agency department in a growing and successful company is, how to secure, educate and keep agents of the right character and capacity. An inspection of the books of any company will reveal an astonishing condition as to the length of service of the average agent. It is not an exaggeration to say that too many agents are migratory, shifting and uncertain in their company-connections. Certain unfortunate and unprofitable consequences follow from this. The uncertainty of his relations with any company fosters a spirit of irresponsibility, and, having no fear of punishment or hope of re-

ward to prevent him from changing his allegiance as often as he sees fit, or as often as he thinks he can presently make a dollar more, the agent frequently does not hesitate over what he says to the public, knowing that next month or next year he may be working not only for another company but in another field. The direct result of this is, that the men whom he insures speedily allow their policies to lapse, and become enemies of life insurance itself. The public charges up against our business the misdeeds of men whose evil tendencies the curent organization of most life insurance companies has been powerless to correct.

The policy-holder's interest in all this is very easily discovered. Business that lapses in this way is unprofitable and always must be so, and business done in this way brings disrepute upon the profession, makes it more difficult to secure the services of desirable men, opens the door to the most reprehensible, expensive and dangerous forms of competition, and in the end results not [45] only in the moral loss which we have been outlining, but frequently in a financial loss in which persistent policy-holders are deeply interested. This waste assumes very serious form to the policy-holder when he considers the amount of energy and time and direct expense which is necessary in order to keep the ranks of an active agency department up to the proper standard. If a company has in its employ several thousand agents, an inspection of its books will show that their average term of service is only a few years. The amount of energy which must be constantly ex-

pended to recruit new material to take the place of the men who disappear, is very great. There is a certain amount of expense connected with every new agency contact made, and further expense when that contact is terminated. Any plan, therefore, which has for its object permanency of service, inseparably associated with personal honesty, loyalty, fidelity and achievement, on the part of the agent, must tend to reduce expenses, and at the same time elevate the business of life insurance. It is believed that Nylie directly subserves these purposes.

HOW IT WILL BENEFIT THE AGENT

“A rolling stone gathers no moss.” On the one hand, the agent who is perpetually shifting into the business and out of the business, from one company to another upon the slightest pretext, rarely if ever accumulates either money or desirable position. On the other hand, the agent who persists—working year after year in the interests of one company—soon becomes identified in the public mind with that company. He gives the company character and the company gives him character. The necessary consequence is that the business which he does is of a kind that is profitable at once to the policy-holder and to himself. A review of the records of any life insurance company on this point will show that the men who ultimately acquire a competency and an established and desirable position in the community in which they live, are the men who persistently and quietly keep at

their work in one company. They may [46] not make a great noise about it, and their names may never appear in the daily press, but after a time, almost without exception, you will find that these are the men who have really been successful.

Any plan, therefore, which shows a man who is about to enter upon the business of life insurance that his best interests all lie in persistent and continuous service, any plan which meets the almost dangerous independence which necessarily goes with the solicitor's work, with penalties for irresponsibility and with inducements towards steadiness of application, regularity of effort, personal responsibility and strict honesty, must greatly benefit the profession. Nylie is such a plan.

In addition, Nylie will be at once profitable both to the agent and the policy-holder, in that it is one of the most powerful agencies in the destruction of the rebate evil. At the present time, nearly all American life insurance companies are pledged to the most radical measures against rebating. The rule laid down by the New York Life is, that any agent found engaging in this practice will be summarily dismissed. Dismissal will, of necessity, forfeit all rights in Nylie. Rebating then, under the Rules of Nylie becomes at once an enemy of the agent as well as of the policy-holder. Practicing it in any way, directly or indirectly, involves such serious consequences that no agent who has the slightest regard for his own interests will indulge in it himself or knowingly allow any competing agent to do so.

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GENERAL CONDITIONS OF MEMBERSHIP
FOR ALL AGENTS IN THE UNITED
STATES AND CANADA ENTERING
AFTER JULY 1, 1910

Nylic No. 2 is composed of five classes, as follows:

First. — Freshmen.

Second. — First Degree.

Third. — Second Degree.

Fourth. — Third Degree.

Fifth. — Senior Nylics. [47]

FRESHMAN NYLICS

Any agent of the New York Life Insurance Company, in good and regular standing, shall, upon making written application on the Company's authorized form, and upon agreeing, so long as he remains a member of Nylic, to devote all his time, talents and energies to the Company's service in soliciting personally for business, and also upon receiving a certificate of membership executed by the Company, become a Freshman Nylic as of January 1, preceding the date of his contract, or on any January 1 thereafter, as he may elect, if he complies with all of the conditions laid down herein.

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AFTER TWO NYLIC YEARS' SERVICE

Freshman Nylics shall receive, subject to all the rules of Nylic, monthly from the New York Life Insurance Company a sum of money as follows:

For his 3d year of continuous membership in Nylie the monthly income shall be equal to 25 cents per thousand on the amount of business procured and paid for, as above, during his first Nylie year, after deducting from same the amount of said year's business which has lapsed by non-payment of premium, been canceled, or otherwise terminated up to December 31 of his second Nylie year.

For his 4th year of continuous membership in Nylie the monthly income shall be equal to 25 cents per thousand on the amount of business procured and paid for, as above, during his second Nylie year, after deducting from same the amount of said year's business which has lapsed by non-payment of premium, been canceled, or otherwise terminated up to December 31 of his third Nylie year.

For his 5th year of continuous membership in Nylie the monthly income shall be equal to 25 cents per thousand on the amount of business procured and paid for, as above, during his third Nylie year, after deducting from same the amount of said year's business which has lapsed by non-payment of premium, been canceled, or otherwise terminated up to December 31 of his fourth Nylie year. [48]

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ILLUSTRATION OF MONTHLY INCOME TO FRESHMAN NYLICIS AFTER
TWO YEARS' SERVICE

Amounts assumed for illustration, to have been written during years of Freshman period stated	Amounts assumed, for illustration to have terminated on or before Dec. 31 of years stated, in accordance with the terms contained herein	Net amounts on which to base income of 25 cents per thousand	Monthly income for year of service stated below (for illustration)
1st year, \$100,000	2d year, \$10,000	\$ 90,000	3d Year, \$22.50 per month
2d " 122,000	3d " 12,000	110,000	4th Year, \$27.50 per month
3d " 140,000	4th " 20,000	120,000	5th Year, \$30.00 per month

Dec. 31

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NYLICS OF THE FIRST DEGREE

Any agent who completes the period of service required by Freshman Nylics shall thereupon become a Nylic of the First Degree.

Nylics of the First Degree shall receive, subject to all the rules of Nylic, monthly from the New York Life Insurance Company a sum of money as follows:

For his 6th year of continuous membership in Nylic the monthly income shall be equal to \$0.50 per thousand on the amount of business procured and paid for, as above, during his first Nylic year, after deducting from same the amount of said first Nylic year's business which has lapsed by non-payment of premium, been canceled, or otherwise terminated up to December 31 of his fifth Nylic year.

For his 7th year of continuous membership in Nylic the monthly income shall be equal to \$0.50 per thousand on the amount of business procured and paid for as above, during his second Nylic year, after deducting from same the amount of said second Nylic year's business which has lapsed by non-payment of premium, been canceled, [49] or otherwise terminated up to December 31 of his sixth Nylic year.

For his 8th year of continuous membership in Nylic the monthly income shall be equal to \$0.50 per thousand on the amount of business procured and paid for, as above, during his third Nylic year, after deducting from same the amount of said third Nylic year's business which has lapsed by

non-payment of premium, been canceled, or otherwise terminated up to December 31 of his seventh Nylic year.

For his 9th year of continuous membership in Nylic the monthly income shall be equal to \$0.50 per thousand on the amount of business procured and paid for, as above, during his fourth Nylic year, after deducting from same the amount of said fourth Nylic year's business which has lapsed by non-payment of premium, been canceled, or otherwise terminated up to December 31 of his eighth Nylic year.

For his 10th year of continuous membership in Nylic the monthly income shall be equal to \$0.50 per thousand on the amount of business procured and paid for, as above, during his fifth Nylic year, after deducting from same the amount of said fifth Nylic year's business, which has lapsed by non-payment of premium, been canceled, or otherwise terminated up to December 31 of his ninth Nylic year. [50]

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ILLUSTRATION OF MONTHLY INCOME TO
FIRST DEGREE NYLICS

Amounts assumed, for illustration, to have been written during Freshman Degree period of agent		Amount assumed, for illustration, to be in force on Dec. 31 5 years later, in accordance with the terms contained herein	Monthly income for year of service stated below (for illustration)
		Dec. 31	
1st Year	\$100,000	5th Year \$ 80,000	6th Year \$40.00 per month
2d "	122,000	6th " 108,000	7th " 54.00 "
3d "	140,000	7th " 110,000	8th " 55.00 "
4th "	150,000	8th " 120,000	9th " 60.00 "
5th "	150,000	9th " 130,000	10th " 65.00 "

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NYLICS OF THE SECOND DEGREE

Any agent who shall receive monthly payments during the entire period of service required of Nylics of the First Degree, shall thereupon become a Nylic of the Second Degree.

Nylics of the Second Degree shall receive, subject to all the rules of Nylic, monthly from the New York Life Insurance Company a sum of money as follows:

For his 11th year of continuous membership in nylic the monthly income shall be equal to \$0.75 per thousand on the amount of business procured and paid for as above during his sixth Nylic year, after deducting from same the amount of said sixth Nylic year's business which has lapsed by non-payment of premium, been canceled, matured, or otherwise terminated up to December 31 of his tenth Nylic year.

For his 12th year of continuous membership in Nylic the monthly income shall be equal to \$0.75 per thousand on the amount of business procured and paid for as above during his seventh Nylic year, after deducting from same the amount of said seventh Nylic year's business which has lapsed by non-payment of premium, been [51] canceled, matured, or otherwise terminated, up to December 31 of his eleventh Nylic year.

For his 13th year of continuous membership in Nylic the monthly income shall be equal to \$0.75 per thousand on the amount of business procured

and paid for as above during his eighth Nylic year, after deducting from same the amount of said eighth Nylic year's business which has lapsed by non-payment of premium, been canceled, matured, or otherwise terminated up to December 31 of his twelfth Nylic year.

For his 14th year of continuous membership in Nylic the monthly income shall be equal to \$0.75 per thousand on the amount of business procured and paid for as above during his ninth Nylic year, after deducting from same the amount of said ninth Nylic year's business which has lapsed by non-payment of premium, been canceled, matured, or otherwise terminated up to December 31 of his thirteenth Nylic year.

For his 15th year of continuous membership in Nylic the monthly income shall be equal to \$0.75 per thousand on the amount of business procured and paid for as above during his tenth Nylic year, after deducting from same the amount of said tenth Nylic year's business, which has lapsed by non-payment of premiums, been canceled, matured, or otherwise terminated up to December 31 of his fourteenth Nylic year. [52]

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ILLUSTRATION OF MONTHLY INCOME TO
SECOND DEGREE NYLICS

Amounts assumed for illustration, to have been written during First Degree period of agent	Amounts assumed for illustration, to be in force on Dec. 31, 5 years later, in accordance with the terms contained herein	Monthly income for year of service stated below (for illustration)
	Dec. 31	
6th Year \$100,000	10th Year \$ 80,000	11th Year \$60.00 per month
7th " 122,000	11th " 108,000	12th " 81.00 per month
8th " 140,000	12th " 110,000	13th " 82.50 per month
9th " 150,000	13th " 120,000	14th " 90.00 per month
10th " 150,000	14th " 130,000	15th " 97.50 per month

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NYLICS OF THE THIRD DEGREE

Any agent who shall receive monthly payments during the entire period of service required of Nylics of the Second Degree, shall thereupon become a Nylic of the Third Degree.

Nylics of the Third Degree shall receive, subject to all the rules of Nylic monthly from the New York Life Insurance Company a sum of money as follows:

For his 16th year of continuous membership in Nylic the monthly income shall be equal to \$1.00 per thousand of the amount of business procured and paid for as above during his eleventh Nylic year, after deducting from same the amount of said eleventh Nylic year's business which has lapsed

by non-payment of premium, been canceled, matured, or otherwise terminated up to December 31 of his fifteenth Nylic year.

For his 17th year of continuous membership in Nylic the montly income shall be equal to \$1.00 per thousand on the amount of business procured and paid for as above during his twelfth Nylic year, after deducting from same the amount of said twelfth Nylic year's [53] business which has lapsed by non-payment of premium, been canceled, matured, or otherwise terminated up to December 31 of his sixteenth Nylic year.

For his 18th year of continuous membership in Nylic the monthly income shall be equal to \$1.00 per thousand on the amount of business procured and paid for as above during his thirteenth Nylic year, after deducting from same the amount of said thirteenth Nylic year's business which has lapsed by non-payment of premium, been canceled, matured, or otherwise terminated up to December 31 of his seventeenth Nylic year.

For his 19th year of continuous membership in Nylic the monthly income shall be equal to \$1.00 per thousand on the amount of business procured and paid for as above during his fourteenth Nylic year, after deducting from same amount of said fourteenth Nylic year's business which has lapsed by non-payment of premium, been canceled, matured, or otherwise terminated up to December 31 of his eighteenth Nylic year.

For his 20th year of continuous membership in Nylic the monthly income shall be equal to \$1.00

per thousand on the amount of business procured and paid for as above during his fifteenth Nylic year, after deducting from same the amount of said fifteenth Nylic year's business which has lapsed by non-payment of premium, been canceled, matured, or otherwise terminated up to December 31 of his Nineteenth Nylic year. [54]

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ILLUSTRATION OF MONTHLY INCOME TO THIRD DEGREE NYLICS

Amounts assumed, for illustration, to have been written during Second Degree period of agent		Amounts assumed, for illustration, to be in force on Dec. 31, 5 years later, in accordance with the terms contained herein		Monthly income or year of service stated below (for illustration)	
		Dec. 31			
11th Year	\$100,000	15th Year	\$ 80,000	16th Year	\$ 80.00 per month
12th "	122,000	16th "	108,000	17th "	108.00 per month
13th "	140.00	17th "	110,000	18th "	110.00 per month
14th "	150,000	18th "	120,000	19th "	120.00 per month
15th "	150,000	19th "	130,000	20th "	130.00 per month

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SENIOR NYLICS

Senior Nylics shall receive so long as they live, provided only that they shall not enter the service of any other life insurance company, monthly payments as follows:

The basis of business for incomes for the 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th,

18th, 19th and 20th years of continuous Nylic membership will be added together and divided by 15. The sum thus obtained will then be averaged with the amount of new business written and placed under the conditions provided above during that year of service as a Third Degree Nylic in which his production was smallest, after deducting from same the amount of business placed during said smallest year which has lapsed, by non-payment of premium, been canceled, or otherwise terminated up to December 31 of his twentieth Nylic year. His monthly income as a Senior Nylic shall be \$0.75 per thousand on the average, or amount, thus obtained.

[55]

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ILLUSTRATION OF MONTHLY INCOME TO SENIOR NYLICS

BASIS OF INCOME For the Year Stated		RECORD While a Third Degree Nylic	
6th	\$ 80,000		
7th	108,000		
8th	110,000	Amounts assumed to be procured during Third Degree period	Amount assumed to be in force on Dec. 31 of the 20th Nylic year from the smallest year's business
9th	120,000		
10th	130,000		
11th	80,000		
12th	108,000		
13th	110,000		
14th	120,000		
15th	130,000		
16th	80,000	\$124,000	\$80,000
17th	108,000	135,000	
18th	110,000	116,000	
19th	120,000	90,000	
20th	130,000	140,000	

Total of sums used as basis for income from 6th to 20th year	\$1,644,000
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Divided by 15) 1,644,000 (=	109,600
15	

 144

135

 90

90

Amount in force Dec. 31 of 20th Nylie year of smallest year of 3d degree.....	80,000
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Total.....	\$ 189,600
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Average = \$94,800

75c per \$1,000 = \$71.10 monthly income for life

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PHYSICAL INCAPACITY

Any agent who is a Drawing Nylie becoming physically incapacitated for work of any kind, shall, having established the fact of such total disability to the Company's satisfaction, receive monthly an amount equal to the average monthly payments he has received from the beginning of the "degree" of which he is a member at the time of such disability, said monthly payments to be continued to him during the continuance of the disability (satisfactory [56] proof of the continuance thereof to be furnished the Company from time to time, on demand), not, however, to exceed a period of five years in all; and at the end of such period, all further payments to such agent on account of Nylie shall cease. If such agent should recover from

such disability and resume work as agent for the Company, the Company shall, at its option, make such adjustment of his position in Nylie as shall, in its judgment, seem fair and right.

GENERAL RULES

I. Every Nylie, except Senior Nylies, must devote his entire time, talents and energies to the service of the New York Life Insurance Company in soliciting personally for business. A Nylie can have no other business or occupation for profit or gain.

II. No agent, except a Senior Nylie, can continue to be a member of Nylie, who, in addition to devoting his entire time, talents and energies to the Company, does not produce each and every year on other lives than his own, at least \$50,000 of insurance (Term and Child's and Pure Endowments excepted) upon which one full year's premium in due course of business is paid.

III. Term insurance and Child's and Pure Endowments shall not count in any way in Nylie. Instalment insurance counts for its commuted value only. Insurance on an agent's own life, if same is written in accordance with the rules herein contained, will count in Nylie, provided same is not required to bring the amount up to the qualifying mark in any year.

IV. Business written by the collection of a quarterly or semi-annual premium will ultimately be counted, provided sufficient subsequent premiums thereon are collected to cover one year's insurance.

Any business which lapses before this has been done will not be counted.

V. Strictly personal business only will be allowed to count in Nylie. If a case is written personally by an agent, and part of his commission is allowed another party, proper deduction will be made. Thus, if an agent pays out one-third of his commission [57] in this way, the business thus procured will only count for two-thirds of its face value. If, on the other hand, an agent is given a case and does not help write the business personally, he will not receive any credit whatsoever for same, no matter what portion of his commission he allows to the party who writes the business.

VI. No salaried employe and no person receiving a salary for a part or all of his time can be a member of Nylie.

VII. No agency director, manager, nor general agent in control of a territory, nor agent having sub-agents, can be a Nylie.

VIII. The Company may, at its discretion, where it is convinced that the rules of Nylie in an individual case—because of special conditions or peculiarities surrounding the case—act unfairly upon a member of Nylie, make such exceptions in his behalf to the Nylie rules as it deems advisable. The making of such exceptions shall not thereafter act as a waiver of the rules and conditions of Nylie.

IX. The Company will, for a period of six months, pay to any beneficiary designated in writing by the agent and filed with the Company at its

Home Office, or, in lieu of such designated beneficiary, to the estate of any Nylie in good and regular standing in the First, Second or Third Degree, or Senior Nylie, upon his decease, whatever monthly income on account of Nylie the deceased may have been drawing at the time of his death.

X. Any member of Nylie becoming incapacitated for work of any kind on account of temporary illness may, upon establishing to the Company's satisfaction the fact that said temporary illness was of such a character as to prevent his qualifying as a Nylie member for said year, have said year entirely eliminated from his Nylie record, leaving his future Nylie status to be adjusted by the Company accordingly, or, at the option of the Company, have said year counted in Nylie, taking the actual paid business of said year as a basis for future Nylie payments depending on said year [58]

XI. Any Nylie who shall in any calendar year pay for less than \$50,000 of new insurance in accordance with these rules, shall thereby cease to be a member of Nylie, and all claim to time credit or to any further payments from the Company on account of Nylie shall thereupon and thereafter be void and of no effect. The Company may cancel and terminate any agent's membership in Nylie and all benefits thereunder for violation of any Nylie rule or of any rule or regulation of the Company.

XII. The termination of an agent's contract and agency, prior to his becoming a Senior Nylie,

or the removal or transfer of an agent, prior to becoming a Senior Nylic, to any country where the Nylic benefits have not been extended by the Company to its agents, terminates his Nylic membership and all his Nylic rights.

XIII. The Company shall have a paramount lien upon all sums payable under Nylic to secure the payment of any indebtedness of the agent to the Company, and may apply any sums becoming due directly toward the liquidation of any such indebtedness, but its failure so to apply it shall not be deemed a waiver of its lien on other sums becoming due or impair its right to apply such sums toward the liquidation of any such indebtedness.

XIV. The benefits of Nylic are not assignable without written consent of the Company given by an executive officer.

XV. This publication is issued subject to all the rules and regulations of the Company that govern the conduct of its business.

XVI. The Company reserves the right in its discretion, at any time and from time to time, to alter, amend or repeal any and all of the rules and conditions of Nylic as herein expressed by later editions of this publication. Provided, however, such changes shall be effective as to future business only. No change shall be made in the amount of business which a member, under these rules, in good standing, shall be required to write to maintain membership, nor in the basis of the Nylic compensation of such member [59]

1-F July, 1910

EXHIBIT "C"

This Agreement, made this seventeenth day of August in the year 1910 by and between the New-York Life Insurance Company, as party of the first part, and Frederick C. Moser of Seattle in the County of King and State of Washington, as party of the second part, Witnesseth,—

That said parties, in consideration of the mutual covenants and agreements herein contained, hereby mutually covenant and agree with each other, as follows, to wit:

That said first party hereby appoints said second party its special Agent for the purpose of canvassing for applications for insurance on the lives of individuals, and of performing such other duties in connection therewith as the Officers of said first party may in writing expressly require of him, and that this appointment is made upon the following terms, conditions and agreements:

1st. It is agreed that said second party shall have no authority for or on behalf of said first party to accept risks of any kind, to make, modify or discharge contracts, to extend the time for paying any premium, to bind the Company by any statement, promise or representation, to waive forfeitures or any of the Company's rights or customary requirements, to name any extra premium for extra risks or privileges, to receive any moneys due or to become due to said first party except upon applications obtained by or through him and then only in exchange for the coupon receipt attached to

the application corresponding in date and number with the application or upon policies or renewal receipts signed by the President, a Vice-President, a Secretary, or the Treasurer, sent to him by the first party for collection.

2d. It is agreed that the second party as such agent shall devote his best talents and energies to the business of this appointment, shall promptly deliver to the first party all applications for insurance upon the Annual Dividend Plan taken or obtained by him whether the medical examiner has reported thereon favorably or unfavorably, and shall strictly observe each and all the rules, regulations, and requirements contained in the first party's book of "Instructions to Agents" issued from time to time, and such special instructions as may from time to time be given to him by any officer of the first party.

3d. It is agreed that the second party shall keep regular and accurate accounts of all transactions under this appointment, and, whenever required by the first party or its authorized agent, shall transmit to the first party a report in detail, embracing every item of business done by or through him and a statement of all moneys collected or received by or through him or on account of said first party.

4th. It is agreed that all books of account, documents, vouchers, and other books or papers whatsoever connected with the business of this appointment, shall be the property of the first party, whether paid for by it or not, and at any and all times shall be open to the first party or its repre-

representative for the purpose of examination, and shall be turned over to the first party or its [60] representative on its order at the termination of this appointment,—provided, however, that no entry contained in any book of account or other document made or kept by said second party shall be binding on the first party, nor shall any such entry be used as evidence in any dispute between said parties unless the same shall have been first duly examined and approved by the authorized representative of the first party.

5th. It is agreed that all moneys received by the second party for or on behalf of the first party, shall be securely held by him as a fiduciary trust and shall not be used by him for any personal or other purpose whatsoever, but shall be by him immediately paid over to the first party; and that if the second party shall withhold any money, policies, or receipts belonging to the first party after the same have been reported or transmitted to said first party, or if he shall withhold any money, policies, or receipts after they shall have been by it demanded from him, such dereliction shall immediately and without further notice work an unconditional forfeiture of all claims and demands whatsoever accrued or to accrue under this or any previous agreement, but nothing herein contained shall be construed to affect any rights or claims of said first party against said second party.

6th. It is agreed that the district within which said second party shall have permission to operate is such portions of the State of Washington or

such other territory as the first party may direct from time to time, and that the second party shall report his business through the first party's Seattle Branch Office.

7th. It is agreed that said second party shall thoroughly and ably canvass said district; that the first party may, at its option, employ other Agents in said district, and that the second party shall have no claim for commissions or other remuneration on the business effected by such other Agent or Agents so employed.

8th. It is agreed that if in any case the first party shall deem it proper, in consequence of misrepresentations claimed to have been made or misunderstandings had at or before the time of the delivery of a policy, to cancel the policy and return the premiums thereon or any part thereof, the second party shall in such case lose all right to commissions thereon, and shall repay to the first party, on demand, the amount of commissions received on account of such policy.

9th. It is agreed that said second party shall collect from time to time and promptly remit to the first party all renewal premiums which the first party may authorize him to collect by delivering to him for that purpose the Company's official renewal receipt, but not otherwise.

10th. It is agreed that the necessary expenses for medical examinations (except as provided in Section 17th hereof and in the Company's book of "Instructions to Agents"), for expressage on docu-

ments and other things sent by the first party to the second party, shall be paid by the first party, and that the first party shall furnish to the second party such a supply of blanks and circulars as it shall deem reasonable; but the first party shall be liable to pay no charge other than as herein stated, or as shall hereafter be allowed in writing by the first party.

11th. It is agreed that the first party shall have, and it is hereby given, a lien upon any commissions or claims for commissions under this or any prior agreement as security for the payment of any claims due or to become due to said first party from said second party. [61]

12th. It is agreed that the second party shall not enter the service of, or place any applications for Annual Dividend insurance with, any other life insurance company, without the consent in writing of the first party.

13th. It is agreed that the first party's ledger account with said second party shall at all times be competent and conclusive evidence of the state of the account between the parties hereto, and shall constitute a mutual estoppel as between them. In consideration of the last above agreement in this paragraph contained, the first party agrees to furnish to the second party a copy of his said ledger account, not oftener, however, than once a month, upon receipt of written request therefor, due allowance to be made, however, for clerical delays in furnishing the same, and if one copy of his ledger account has been furnished him, any subsequent

copy may consist only of the additional ledger entries made since the date of such copy, or may consist only of the additional ledger entries made since the date of the last copy of additional ledger entries furnished him.

14th. It is agreed that said second party shall keep deposited with the first party a bond for a satisfactory amount, with satisfactory sureties, conditioned for the faithful performance of his duties as such agent.

15th. It is agreed that in case any other special agent or person acting for the first party shall obtain any business jointly with him, the commission hereinafter provided shall be divided equally between the parties hereto, unless otherwise expressly agreed in writing; that when policies are returned for change and an allowance made on the old policy which is applied to the payment of the premium on the new, no commission shall be allowed on the amount thus transferred from the old to the new policy, and that the commission provided in Section 20 shall not apply when the insured is over sixty years of age.

16th. It is agreed that if the second party shall sell or offer to sell, directly or indirectly, to any person or persons, policies for insurance to be issued by said first party, at any reduction from the regular Table rates as furnished to said second party by the first party, said sale or offer of sale shall work an immediate termination of this agreement and a forfeiture of all rights and claims arising on account of it without altering or impairing

any rights or claims of said first party against said second party.

17th. It is agreed that, in case a policy issued as applied for shall be subsequently returned as "not taken", the second party shall pay to the first party such sum of money as shall cover all fees and expenses connected with issuing such policy.

18th. It is agreed that either party hereto may without cause terminate this agreement upon thirty days' written notice.

19th. It is expressly understood and agreed that this agreement shall be considered strictly confidential, and that under no circumstances shall said second party mention or exhibit the terms thereof to any person or persons.

20th. It is agreed that the first party shall pay and the second party receive under this agreement the following compensation only unless otherwise agreed in writing, to wit:

A. A commission on the premium for the first year of insur- [62] ance, which shall be paid in cash to and received by the first party upon policies of insurance effected with said first party upon the lives of persons whose written applications therefor were obtained by or through the second party, issued at ages sixty and under, at and after the following rates,—

A. Ordinary Life and Endowments paid by 40 annual premiums	55 per cent.
B. Limited-payment Life policies paid by 20 or more annual premiums and Endowments paid by 35 annual premiums	50 per cent.
C. Fifteen-payment Life and Endowments paid by 30 annual premiums	45 per cent.
D. Endowments paid by 25 annual premiums.....	40 per cent.
E. Endowments paid by 20 annual premiums.....	35 per cent.
F. Endowments paid by 15 annual premiums.....	30 per cent.
G. Endowments paid by 10 annual premiums.....	20 per cent.
H. Ten-payment Life policies	40 per cent.
I. Pure Endowments on lives of Adults; Pure Endowments on lives of children payable at age 25 or under; and Ten-, Fifteen and Twenty-Year Child's Endowments, Exchangeable at age 15	15 per cent.
J. Five-year Term policies	30 per cent.
K. Ten-year, or longer, Term policies	30 per cent.

B. On all annuities paid by single premiums and on all single premium policies the compensation shall be a commission of 3% on said single premium.

C. On all annuities not included in the last above paragraph "B", the compensation shall be such as the Company shall allow in writing in each specific case.

D. On all forms of insurance and for all ages not included in the above paragraphs "A", "B" and "C" hereof, the compensation shall be such percentum of the premium received for the first year of insurance as will yield in amount a sum equal to 50% of the premium for the first year of insurance on an Ordinary Life policy of the same amount and at the same age, but no renewal commission thereon shall be allowed.

E. A single renewal commission on the premium for the second year of insurance or part thereof, which shall be paid in cash to and received by the first party upon said policies of insurance described in the above paragraph "A", based upon the efficiency of service of the second party, and subject to all the terms and conditions of this contract and especially of sections 5th and 16th thereof, as follows, to wit:

(a) Five per cent. on policies designated in said paragraph [63] "A" as A, B, C, D, E and H, and Four per cent. on policies designated therein as F, and Three per cent. on policies designated therein as G, I and K, and Two per cent. on policies designated therein as J, provided the total volume of new insurance obtained by or through the second party on all ~~the plans described in said paragraph "A"~~, the applications for which were written and the medical examinations made during any twelve calendar months ending on the thirty-first day of December, each year, upon which the policies were delivered and the premium for one insurance year paid in cash to and received by the first party during said twelve months or within sixty days thereafter (policies upon which less than one full insurance year's premiums were paid as above to count pro rata), amounts to \$20,000 or over, said renewal commission to be on said policies of each such twelve calendar months period only and to be in lieu of all other renewal commissions; or,

(b) Ten per cent on policies designated in said paragraph "A" as A, B, C, D, E and H, and Eight

per cent. on policies designated therein as F, and Six per cent. on policies designated therein as G, I and K, and Four per cent. on policies designated therein as J, provided the total volume of said new insurance amounts to \$30,000 or over, said renewal commissions to be on said policies of each such twelve calendar months period only and to be in lieu of all other renewal commissions; or,

(c) Fifteen per cent. on policies designated in said paragraph "A" as A,B,C,D and E, and Fourteen per cent. on policies designated therein as H, and Twelve per cent. on policies designated therein as F, and nine per cent. on policies designated therein as G, I and K, and Six per cent. on policies designated therein as J, provided the total volume of said new insurance amounts to \$40,000 or over, said renewal commission to be on said policies of each such twelve calendar months period only and to be in lieu of all other renewal commissions.

21st. It is agreed that in the event of the termination of this agreement by the death of the second party all commissions provided for in this contract shall, as they accrue thereafter, be credited to the account of the second party with the first party, and be payable to his executors, administrators or assigns, less any indebtedness to the first party.

22d. It is agreed that this agreement shall take effect on the first day of January 1911, if duly signed by the second party and countersigned on behalf of the first party by its Contract Registrar at its Home Office, and by one of its Agency Direc-

tors, Supervisors or Inspectors of Agencies. It is agreed in consideration of this agreement that all previous agreements between the parties hereto are hereby cancelled as of the date this agreement takes effect.

In Witness Whereof, the parties to this agreement have subscribed their name to duplicate copies hereof the day and year first above written.

NEW-YORK LIFE INSUR-
ANCE COMPANY,

By THOS. A. BUCKNER.

Vice-President

F. C. MOSER

Countersigned by

E. A. LEWIS

Contract Registrar.

S. SETON LINDSAY

A. D. [64]

In the District Court of the United States
For the Western District of Washington,
Northern Division.

File No. 901
Civil Action

F. C. MOSER,

Plaintiff,

vs.

NEW YORK LIFE INSURANCE COMPANY,
a corporation,

Defendant.

ORDER DISMISSING PLAINTIFF'S ACTION

The above entitled action this day came on regularly to be heard upon the motion of the above named defendant to dismiss said action upon the grounds that in the complaint, as supplemented by plaintiffs bill of particulars, plaintiff fails to state a claim upon which relief can be granted and that it appears conclusively from the allegations thereof that the action alleged is barred by the statute of limitations of the State of Washington and by laches on the part of the plaintiff, and the parties having heretofore duly and regularly filed briefs in support of their respective positions and the Court having heard oral arguments by Clarence J. Coleman, Esq., on behalf of plaintiff and Clarence R. Innis, Esq. on behalf of defendant, and being in all respects fully advised, it is by the Court

Ordered, Adjudged And Decreed that the said

motion be and the same is hereby granted and the said action be and the same is hereby dismissed with prejudice to any subsequent suit or action upon said claim, and that defendant have and recover of plaintiff its costs.

To which ruling plaintiff excepted and said exception is by the Court allowed.

Done In Open Court this 11th day of July, 1944.

LLOYD L. BLACK

United States District Judge.

CLARENCE R. INNIS

Attorney for Defendant

Approved As To Form:

CLARENCE J. COLEMAN,

Attorney for Plaintiff

[Endorsed]: Filed Sep. 11 1944. [65]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the defendant, New York Life Insurance Company, a corporation, and to Clarence R. Innis, its attorney:

Notice Is Hereby Given that F. C. Moser, plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Ninth Ninth District from

the order and judgment of dismissal entered in this action September 11, 1944.

F. C. MOSER

By CLAYTON BOLLINGER

CLARENCE J. COLEMAN

Attorneys for Plaintiff, 415
First National Bank Building,
Everett, Washington.

[Endorsed]: Filed Oct 10 1944. [66]

[Title of District Court and Cause.]

COST BOND

Know All Men By These Presents, that we, F. C. Moser, as principal and Sun Indemnity Company a corporation as sureties, are held and firmly bound unto New York Life Insurance Company, a corporation, in the full and just sum of Two Hundred and Fifty (\$250.00) Dollars, to be paid to the said New York Life Insurance Company, a corporation, its successors or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 9th day of October, 1944.

Whereas, lately, at the May 1944 term of the District Court of the United States for the Western District of Washington, Northern Division, in a suit depending in said court between F. C. Moser,

plaintiff, and New York Life Insurance Company, a corporation, defendant, order and judgment of dismissal was rendered against the said plaintiff, at the May 1944 term of court, and the said plaintiff has filed his notice of appeal from said judgment and order of dismissal to the Circuit Court of Appeals for the 9th District.

Now, the condition of the above obligation is such that if the said F. C. Moser shall prosecute said appeal to effect, and [67] answer all costs, and if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

F. C. MOSER

Appellant

[Seal]

SUN INDEMNITY CO.

By CARL T. VENNIGERHOLTZ

[Endorsed]: Filed Oct. 10 1944. [68]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF
RECORD ON APPEAL.

To the Clerk of the above entitled Court:

You will please prepare transcript of the entire record in the above entitled cause to be filed with the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit under notice of appeal which was filed in your office on the 10th day of October, 1944, and include

in such transcript the following pleadings, proceedings and papers, to-wit:

1. Transcript on removal
2. Defendant's appearance
3. Bond.
4. Notice
5. Defendant's Motion to Dismiss.
6. Defendant's Motion to make more definite and certain.
7. Plaintiff's Appearance
8. Notice.
9. Original Summons and Complaint.
10. Order dated July 3, 1944.
11. Second Order dated July 3, 1944.
12. Plaintiff's Bill of Particulars.
13. Order of Dismissal.
14. Notice of Appeal to the Circuit Court of Appeals.
15. Bond.
16. Designation of Portions of the record to be contained [69] in the record on appeal.

Said transcript to be prepared as required by law and the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

CLAYTON BOLLINGER

CLARENCE J. COLEMAN

Attorneys for Plaintiff. F. C.
Moser.

[Endorsed]: Filed Oct 24 1944. [70]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD

United States of America,
Western District of Washington—ss.

I, Judson W. Shorett, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the foregoing type-written transcript of record, consisting of pages numbered from 1 to 70, inclusive, is a full, true and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as is required by designations of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court at Seattle, and that the same, constitute the record on appeal herein from the Order of Dismissal dated July 11, 1944, of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit, to-wit:

Clerks' fees (Act of Feb. 11, 1925) for making record, certificate or return, 36 folios	
at 15c	\$ 5.40
158 folios at 5c.....	7.90

Appeal fee (Sec. 5 of Act)	5.00
Certificate of Clerk to Transcript50
Total	\$ 18.80

I hereby certify that the above costs in the sum of \$18.80 have been paid to me by the attorney for the appellant.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, this 15 day of November, 1944.

[Seal] JUDSON W. SHORETT,
 Clerk,
 By TRUMAN EGGER,
 Chief Deputy

[Endorsed]: No. 10925. United States Circuit Court of Appeals for the Ninth Circuit. *F. C. Moser, Appellant. vs. New York Life Insurance Company, a corporation, Appellee.* Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed November 20, 1944.

 PAUL P. O'BRIEN
 Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10925

F. C. MOSER,

Appellant,

vs.

NEW YORK LIFE INSURANCE CO.,

Appellee.

STATEMENT OF POINTS TO BE RELIED
UPON AND DESIGNATION OF THE
PARTS OF THE RECORD TO BE
PRINTED

Comes now F. C. Moser, the appellant in the above-entitled cause, and states that the points upon which he intends to rely in this court in this case are as follows:

1. The court erred in sustaining appellee's motion to dismiss appellant's complaint.
2. The court erred in holding that the cause of action alleged in appellant's complaint was barred by the Statute of Limitations.
3. The court erred in entering an order dismissing appellant's action with prejudice.

Appellant further states that the whole of the record, as filed, is necessary for a consideration of the case.

Dated December 15, 1944.

CLAYTON BOLLINGER

CLARENCE J. COLEMAN

Attorneys for Appellant

(Affidavit of mailing attached.)

[Endorsed]: Filed Dec. 18, 1944. Paul P. O'Brien, Clerk.